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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 180117042-8548-01]**

**RIN 0648-BH54**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna and Northern Albacore Tuna Quotas**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments; notice of public hearing.

**SUMMARY:** NMFS proposes to modify the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna (BFT) and the baseline annual U.S. North Atlantic albacore (northern albacore or NALB) quota. The proposed action also would modify regulations to update regulatory language on school BFT to reflect current ICCAT requirements. Finally, NMFS also proposes to make a minor change to the Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin tuna damaged by shark bites. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received on or before August 6, 2018. NMFS will host an operator-assisted public hearing conference call and webinar on July 17, 2018, from 3 to 5 p.m. EDT, providing an opportunity for individuals from all geographic areas to participate. See **SUPPLEMENTARY INFORMATION** for further details.

**ADDRESSES:** You may submit comments on this document, identified by “NOAA-NMFS-2018-0004,” by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0004](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0004), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Sarah McLaughlin, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and generally will be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The public hearing conference call information is phone number 1-800-593-7188; participant passcode 6548000. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar, go to:

<https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e051cd980da5c8b77c9062c866bbb3c95>; meeting number: 993 478 244; password: NOAA. Participants who have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

Supporting documents, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis, may be downloaded from the HMS website at [www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species/](http://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species/). These documents also are available by contacting Sarah McLaughlin at the mailing address specified above.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as “Atlantic tunas”) are managed under the dual authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and ATCA (16 U.S.C. 971 *et seq.*). As a member of ICCAT, the United States implements binding ICCAT recommendations pursuant to ATCA, which authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations

under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

Regulations implemented under the authority of ATCA and the Magnuson-Stevens Act governing the harvest of BFT and NALB by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(a) subdivides the ICCAT-recommended U.S. BFT quota among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), and provides the annual BFT quota adjustment process. Section 635.27(e) implements the ICCAT-recommended U.S. NALB quota and provides the annual NALB quota adjustment process. Section 635.20(c) implements the size limit restrictions applicable to BFT, bigeye tuna, and yellowfin tuna. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quotas.

Since 1982, ICCAT has recommended a Total Allowable Catch (TAC) of western Atlantic BFT for contracting parties fishing on the stock, and since 1991, ICCAT has recommended specific quotas within that TAC for the United States and other contracting parties. Since 1999, ICCAT has managed western BFT in accordance with a 20-year rebuilding program adopted in 1998. Since 1998, ICCAT has adopted recommendations regarding the NALB fishery, including quotas for the major harvesters. In 2009, ICCAT established a NALB rebuilding program, including a TAC and several provisions to limit

catches by contracting parties (for major and minor harvesters). ICCAT sets BFT and NALB conservation and management measures, including TACs, following consideration of the latest stock assessment information and management advice provided by the Standing Committee on Research and Statistics (SCRS), ICCAT's scientific body.

Through this action, NMFS proposes to adjust the annual U.S. baseline BFT quota and subquotas and the annual U.S. baseline NALB quota to implement the new quotas adopted in 2017 by ICCAT as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. NMFS also is proposing minor modifications to the Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin tuna damaged by shark bites. This change would allow retention, possession, and landing of bigeye and yellowfin tuna for which the otherwise-required measurement to the fork of the tail may not be possible, provided that the remainder of the fish meets the applicable minimum sizes. Minimum fish size regulations apply to Atlantic bluefin tuna, bigeye tuna, and yellowfin tuna but this change would apply only to bigeye and yellowfin tunas. This change is not a result of ICCAT recommendations but rather clarifies the applicability of size limits to a situation that is not addressed by the current regulations. The clarification is included in this action for purposes of administrative efficiency and because it addresses Atlantic tunas management, like the other actions being implemented here. Finally, this action would modify regulations to update regulatory language on school BFT to reflect current ICCAT requirements.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which analyze the anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this proposed rule. The list of alternatives and their analyses are provided in the draft EA/RIR/IRFA and are not repeated here in their entirety. The effects of the changes related to retention of shark-bitten tunas are primarily economic and administrative in nature and thus are not analyzed in the draft EA. The effects of updating regulatory language on school BFT to reflect current ICCAT requirements are administrative in nature and thus are not analyzed in the draft EA.

A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see ADDRESSES).

### **Bluefin Tuna Annual Quota and Subquotas**

#### *2017 ICCAT Stock Assessment and Recommendation*

The SCRS took a substantially different approach in 2017 from prior years in evaluating and providing management advice for the western BFT stock. In the past, significant uncertainties in some population characteristics resulted in assessments with very divergent stock status estimates, creating serious challenges for management. In an effort to improve this situation, the SCRS moved away from assessing the western stock against biomass-based reference points and instead evaluated the stock and provided management advice based on fishing mortality rate-based reference points. The draft EA provides more detailed information about the differences between the previous stock

assessments' approach and the current approach, focusing on the last (2014) stock assessment, to offer more context and information.

In past western BFT stock assessments and updates, the SCRS presented status and projection information based on two divergent stock recruitment potential scenarios (low and high) and stated that it had insufficient evidence to favor either scenario over the other. Generally, under the low recruitment scenario, it was assumed that the stock is not as productive as it once was (*i.e.*, prior to the 1970s) and therefore the maximum sustainable yield (MSY) is fairly low, and the stock is considered rebuilt. Under the high recruitment scenario, it was assumed that the stock could be much more productive as it recovers and MSY is much higher. However, under this scenario, the stock could not be rebuilt within the rebuilding period, even with no catch. The SCRS' findings did not permit specification of a single MSY level for management purposes. Given the conflicting scenarios, ICCAT selected a TAC that would ensure continued stock growth under either scenario. Following the 2014 stock assessment, NMFS applied domestic stock status determination criteria and concluded that the status of the stock should be changed from "overfished and subject to overfishing" to "overfished and no longer subject to overfishing," indicating an improved stock status under either scenario.

The SCRS next conducted a stock assessment for western Atlantic bluefin tuna in 2017. The 2017 stock assessment report stated that, despite considerable efforts to improve the historical data for the western Atlantic bluefin tuna stock and resolve assessment uncertainties, the SCRS has not gained any further insights into future recruitment potential. The assessment concluded that any additional improvements to the

historical data are likely to be rather modest in scope and the SCRS expects such insights to “remain elusive.” Moreover, the SCRS stated that the ICCAT Convention objective of stabilizing the stock near the biomass necessary to produce MSY ( $B_{MSY}$ ) by its very nature tends to prevent the stock from reaching the high and low biomass levels needed to provide adequate contrast for estimating the spawner-recruit relationship in this situation, which may help resolve the divergent recruitment potential scenarios. The SCRS indicated that it is not possible to calculate biomass-based reference points (*e.g.*,  $B_{MSY}$  and the fishing mortality rate consistent with achieving MSY,  $F_{MSY}$ ) without additional knowledge (or making assumptions) about how future recruitment potential relates to spawning stock biomass. In other words, the SCRS continues to be unable to provide *one*  $B_{MSY}$  and corresponding allowable fishing mortality rate that applies regardless of the stock’s long-term recruitment potential. In light of the continued inability to set such biomass-based reference points and the unlikelihood of resolution in the near future, the SCRS decided to take a new approach to the stock assessment, focusing on fishing mortality rate-based reference points. The SCRS indicated that in other situations with stocks facing such uncertainties, several fishing mortality rate-based reference points have been recommended as proxies for  $F_{MSY}$  as a strategy for effective stock management. A fishing mortality rate-based approach does not rely on or assume a stock-recruitment relationship but is derived from the yield-per-recruit curve. More detail about the  $F_{0.1}$  approach is provided in the draft EA. The SCRS stated in the assessment that it considers  $F_{0.1}$  to be a reasonable proxy for  $F_{MSY}$  for the western Atlantic bluefin tuna stock and indicated that fishing consistently at  $F_{0.1}$  will, over the

long-term, cause the stock to fluctuate around the corresponding long-term biomass ( $B_{0.1}$ ), whatever the future recruitment potential.

The SCRS advised that annual constant catches from 2018-2020 should not be greater than 2,500 metric tons (mt) as that would exceed the median yield associated with  $F_{0.1}$ . A table showing the probability of avoiding overfishing for various constant TACs was included in the report. The SCRS noted that nearly all constant catch options shown (*i.e.*, TACs greater than 1,000 mt) would result in an estimated decrease in biomass between 2018 and 2020; the percentage decrease being larger for the larger catches. For further detail, see pages 98 and 111 through 121 of the SCRS report at [http://www.iccat.int/Documents/Meetings/Docs/2017\\_SCRS\\_REP\\_ENG.pdf](http://www.iccat.int/Documents/Meetings/Docs/2017_SCRS_REP_ENG.pdf).

At its November 2017 meeting, after considering the SCRS advice, ICCAT adopted a recommendation for an interim conservation and management plan for western Atlantic BFT for 2018 through 2020 (ICCAT Recommendation 17-06). An interim approach was selected in light of the SCRS' new stock assessment approach and ICCAT's development of management procedures for the stock by 2020. Management procedures are a way to manage stocks in light of stock assessment and other scientific uncertainties and include use of stock monitoring, pre-agreed actions based on triggers, and evaluation to help ensure identified management objectives are achieved. See EA for more details. The Recommendation includes a TAC of 2,350 mt annually (*i.e.*, an increase of approximately 17.5 percent) for each of 2018, 2019, and 2020. This TAC is within the SCRS-recommended range and provides a buffer from the top end of the range to help further account for identified stock assessment uncertainties. Relevant provisions

*of the Recommendation by ICCAT Amending the Supplemental Recommendation by ICCAT Concerning the Western Atlantic Bluefin Tuna Rebuilding Program*

(Recommendation 16-08) were also maintained in Recommendation 17-06, such as those involving effort and capacity limits, the 10-percent limit on the amount of unused quota Contracting Parties may carry forward, minimum fish size requirements and protection of small fish (including the 10-percent tolerance limit on the harvest of BFT measuring less than 115 cm and the procedures for addressing overharvest of the tolerance limit), area and time restrictions, transshipment, scientific research, and data and reporting requirements.

Following the 2017 stock assessment, NMFS, applying domestic stock status determination criteria, concluded that the overfished status of the stock is unknown and the stock is not subject to overfishing, stating that changing from overfished to unknown status was appropriate given the continued inability to resolve the two widely divergent stock recruitment potential scenarios and the SCRS' rejection of that approach in the 2017 assessment in favor of a new approach.

*Quotas and Domestic Allocations*

Recommendation 17-06 maintained the quota sharing arrangement (i.e., the percentages to each Contracting Party) of previous recommendations. Under the ICCAT recommendation, the annual U.S. quota is 1,247.86 mt, plus 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), resulting in a total of 1,272.86 mt. All TAC, quota, and weight information in this action are whole weight amounts.

This action proposes implementing the ICCAT-recommended quota of 1,272.86 mt, which would remain in effect until changed (for instance as a result of a new ICCAT BFT TAC and U.S. quota recommendation). NMFS currently anticipates that the annual baseline quota and subquotas would be in effect through 2020.

The ICCAT-recommended BFT quota proposed in this action would then be divided among the established regulatory domestic BFT subquota categories. First, 68 mt is subtracted from the annual U.S. baseline BFT quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent; Angling—19.7 percent; Harpoon—3.9 percent; Purse Seine—18.6 percent; Longline—8.1 percent (plus the 68-mt initial allocation); Trap—0.1 percent; and Reserve—2.5 percent.

The table below shows the proposed quotas and subquotas that result from applying this process. These quotas would be codified at § 635.27(a) and would remain in effect until changed.

**Table 1. Proposed annual Atlantic bluefin tuna quotas (in metric tons).**

Category	Annual Baseline Quotas and Subquotas			
	Quota	Subquotas		
General	555.7			
		January-March <sup>1</sup>	29.5	
		June-August	277.9	
		September	147.3	
		October-November	72.2	
		December	28.9	
Harpoon	46.0			
Longline	163.6			
Trap	1.2			
Purse Seine	219.5 <sup>2</sup>			
Angling	232.4			
		School	127.3	
		Reserve		23.5
		North of 39°18' N. lat.		49.0
		South of 39°18' N. lat.		54.8
		Large School/Small Medium	99.8	
		North of 39°18' N. lat.		47.1
		South of 39°18' N. lat.		52.7
		Trophy	5.3	
		North of 39°18' N. lat.		1.8
		South of 39°18' N. lat.		1.8
		Gulf of Mexico		1.8
Reserve	29.5 <sup>2</sup>			
<b>U.S. Baseline Quota</b>	<b>1,247.86<sup>3</sup></b>			
<b>Total U.S. Quota, including 25 mt for NED (Longline)</b>	<b>1,272.86<sup>3</sup></b>			

<sup>1</sup> January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached or projected to be reached, or through March 31, whichever comes first.

<sup>2</sup> Baseline amount shown. Does not reflect the annual quota reallocation process (for the Purse Seine and Reserve category quotas) adopted in Amendment 7 and codified in the regulations.

<sup>3</sup> Totals subject to rounding error.

Within the BFT quota proposed in this action and consistent with the ICCAT-recommended limit on the harvest of school BFT (measuring 27 to less than 47 inches curved fork length (CFL)), the school BFT subquota would be 127.3 mt. The proposed action also would amend the regulations regarding annual quota adjustments to specify that NMFS may adjust the annual school BFT subquota to ensure compliance with the ICCAT-recommended procedures for addressing overharvest of school BFT. This amendment is needed because the current regulatory text refers to outdated language (regarding multi-year “balancing periods”) from a previous ICCAT recommendation.

### **NALB Annual Quota**

#### *Recent ICCAT Stock Assessment and Recommendations*

In 2016, following consideration of the 2016 stock assessment, which showed that the stock was no longer overfished and not subject to overfishing, ICCAT determined that a rebuilding program was no longer needed and adopted a recommendation for a conservation and management program for northern albacore (ICCAT Recommendation 16-06 on a Multi-Annual Conservation and Management Program for North Atlantic Albacore). Recommendation 16-06 maintained the 28,000-mt TAC from the prior recommendation for each of 2017 and 2018, with the possibility of an increase to 30,000 mt for 2019-2020 subject to a decision by the Commission based on updated SCRS advice in 2018. However, in the event that ICCAT adopted a harvest control rule during the 2017-2020 period, the recommendation called for the TAC to be modified accordingly. The annual U.S. quota under that Recommendation was 527 mt. Key

provisions continued to include: quotas for the major harvesters and catch limits for other Contracting Parties and a 10-percent limit on the amount of unused quota Contracting Parties may carry forward.

Recommendation 16-06 also incorporated capacity management measures from other active recommendations, including language establishing an authorized vessel list for NALB, operative paragraphs regarding anticipated harvest control rules and management strategy evaluation for the stock, and performance indicators to support future decision making.

In 2017, following consideration of SCRS' work to test a set of harvest control rules through management strategy evaluation simulations, ICCAT adopted an interim harvest control rule for NALB, the first for any ICCAT stock, with the goal of adopting a long-term harvest control rule following further management strategy evaluation testing over the next few years. ICCAT Recommendation 17-04 (Recommendation by ICCAT on a Harvest Control Rule for North Atlantic Albacore Supplementing the Multiannual Conservation and Management Programme, Recommendation 16-06) establishes various biomass and fishing mortality rate-based reference points and includes the specific harvest control rule formula and figure, as well as the formula for setting the appropriate fishing mortality rate and, in turn, the TAC. The 3-year constant annual TAC adopted by ICCAT in 2017 is 33,600 t for 2018-2020; this 20-percent increase from the current 28,000-t TAC is consistent with the Commission's chosen stability clause, which limits the TAC increase to 20 percent. Application of ICCAT's NALB allocations to Contracting Parties results in a U.S. quota of 632.4 mt, which is a 20-percent increase

(105.4 mt) from the current 527-mt quota. The recommendation calls on the SCRS to continue to develop the management strategy evaluation framework over the 2018-2020 period and calls on ICCAT to review the interim harvest control rule in 2020 with a view to adopting a long-term management procedure at that point. ICCAT plans to consolidate Recommendations 17-04 and 16-06, as well as consider refinements of the interim harvest control rule, at the 2018 Commission meeting.

Following the 2016 stock assessment, NMFS applied domestic stock status determination criteria and concluded that the status of the stock should be changed from “not overfished – rebuilding” to “rebuilt.”

#### *Domestic Quotas*

The currently-codified baseline annual U.S. NALB quota is 527 mt, which NMFS implemented in 2015 to reflect the amount in the previous ICCAT Recommendation (Recommendation 13-05, Supplemental Recommendation by ICCAT Concerning the North Atlantic Albacore Rebuilding Program). This action proposes implementing the current ICCAT-recommended quota of 632.4 mt.

#### **Modification of the Size Limit Regulations to Address Shark-damaged Bigeye and Yellowfin Tuna**

Minimum fish size regulations have applied for Atlantic bluefin tuna, bigeye tuna, and yellowfin tuna since 1996, when NMFS implemented the 27-inch minimum size for BFT consistent with ICCAT requirements, and also implemented a 27-inch minimum size for bigeye and yellowfin tuna for identification and enforcement purposes. These fish may be landed round with fins intact, or eviscerated with the head and fins removed

as long as one pectoral fin and the tail remain attached. They cannot be filleted or cut into pieces at sea. The upper and lower lobes of the tail may be removed from tunas for storage purposes but the fork of the tail must remain intact.

To facilitate enforcement, total CFL is the sole criterion for determining the size class of whole (with head) Atlantic tunas. CFL is measured by tracing the contour of the body from the tip of the upper jaw to the fork of the tail in a line that runs along the top of the pectoral fin and the top of the caudal keel. Pectoral fin curved fork length (PFCFL) is the sole criterion for determining the size class of a *bluefin tuna with the head removed* and is multiplied by 1.35 to obtain total CFL. For detailed diagrams and measuring instructions, see the HMS Compliance Guides at [www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-fishery-compliance-guides](http://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-fishery-compliance-guides).

Currently, the size limit regulations prohibit a person from taking, retaining, or possessing a BFT, bigeye tuna, or yellowfin tuna in the Atlantic Ocean that is less than 27 inches CFL. The regulations also prohibit removing the head of a bigeye tuna or yellowfin tuna if the remaining portion would be less than 27 inches from the fork of the tail to the forward edge of the cut.

NMFS proposes minor modifications to the applicable Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin damaged by shark bites. NMFS implemented similar measures to address shark-damaged swordfish in 1996 (61 FR 27304, May 31, 1996). Specifically, NMFS proposes to add text to the size limit regulations applicable to bigeye and yellowfin tunas to indicate that a “bigeye or yellowfin tuna that is damaged by shark bites may be retained, possessed, or

landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm).” These changes would allow retention, possession, and landing of yellowfin and bigeye tuna for which a measurement to the fork of the tail may not be possible, provided that the remainder of the fish meets the current minimum size (*e.g.*, 27 inches for yellowfin and bigeye tuna). For enforcement purposes to preserve evidence that the carcass was shark-bitten, the action also proposes that no tissue may be cut away from or other alterations made to the shark-damaged area of the fish. The effects of this change are primarily economic and administrative and no environmental effects are anticipated because the change only allows for retention of a very limited number of fish that would otherwise be caught but need to be discarded.

### **Request for Comments**

NMFS solicits comments on this proposed rule through August 6, 2018. See instructions in **ADDRESSES** section.

### *Public Hearing Conference Call*

NMFS will hold a public hearing conference call and webinar on July 17, 2018, from 3 p.m. to 5 p.m. EDT, to allow for an additional opportunity for interested members of the public from all geographic areas to submit verbal comments on the proposed quota rule.

The public is reminded that NMFS expects participants at public hearings and on conference calls to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (all comments are to be directed to the agency on the proposed action; attendees will be called to give their

comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject matter. If attendees do not respect the ground rules, they will be asked to leave the conference call.

### *Classification*

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to analyze the impacts of the

alternatives for implementing the ICCAT-recommended U.S. BFT and NALB quotas and allocating the BFT quota per the codified quota regulations. The proposed action also would update regulatory language on school BFT to reflect current ICCAT requirements and would make a minor change to the Atlantic tunas size limit regulations to address retention, possession, and landing of bigeye and yellowfin tuna damaged by shark bites.

In compliance with section 603(b)(2) of the RFA, the objective of this proposed rulemaking is to implement ICCAT recommendations and achieve domestic management objectives under the Magnuson-Stevens Act.

Section 603(b)(3) of the RFA requires Agencies to provide descriptions of, and where feasible, an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did in a December 29, 2015, final rule (80 FR 81194) which was effective on July 1, 2016 (50 CFR 200.2). In 50 CFR 200.2, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411) for RFA

compliance purposes. NMFS considers all commercial HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As described in the recently published final rule to implement quarterly Individual Bluefin Quota (IBQ) accounting (82 FR 61489, December 28, 2017), the average annual gross revenue per active pelagic longline vessel was estimated to be \$308,050 for 2013 through 2016. NMFS considers all HMS Atlantic Tunas Longline permit holders (280 as of October 2017) to be small entities because these vessels have reported annual gross receipts of less than \$11 million for commercial fishing. The average annual gross revenue per active pelagic longline vessel was estimated to be \$187,000, based on the 170 active vessels between 2006 and 2012 that produced an estimated \$31.8 million in revenue annually. The maximum annual revenue for any pelagic longline vessel between 2006 and 2015 was \$1.9 million, well below the NMFS small business size threshold of \$11 million in gross receipts for commercial fishing. NMFS is unaware of any other Atlantic Tunas category permit holders that potentially could earn more than \$11 million in revenue annually. HMS Angling category permits, which are recreational fishing permits, are typically obtained by individuals who are not considered small entities for purposes of the RFA. Therefore, NMFS considers all Atlantic Tunas permit holders and HMS Charter/Headboat permit holders subject to this action to be small entities.

This action would apply to all participants in the Atlantic tunas fisheries, *i.e.*, to the over 27,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic Tunas permit as of October 2017. This proposed rule is expected

to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT and NALB fisheries or fishing services for recreational anglers. As summarized in the 2017 SAFE Report for Atlantic HMS, there were 6,855 commercial Atlantic tunas or Atlantic HMS permits in 2017, as follows: 2,940 in the Atlantic Tunas General category; 11 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 280 in the Atlantic Tunas Longline category; 1 in the Atlantic Tunas Trap category; and 3,618 in the HMS Charter/Headboat category. In the process of developing the IBQ regulations implemented in the final rule for Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014), NMFS deemed 136 Longline category vessels as eligible for IBQ shares (*i.e.*, 136 vessels reported a set in the HMS logbook between 2006 and 2012 and had valid Atlantic Tunas Longline category permits on a vessel as of August 21, 2013, the publication date of the Amendment 7 proposed rule). This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. It is unknown what portion of fishery participants would benefit from the minor change in the regulations to allow retention, possession, and landing of shark-damaged bigeye and yellowfin tuna, for which a measurement to the fork of the tail may not be possible, provided that the remainder of the fish meets the current minimum sizes (*e.g.*, 27 inches for yellowfin, and bigeye tunas). NMFS has determined that this action would not likely directly affect any small government jurisdictions defined under the RFA.

Under section 603(b)(4) of the RFA, agencies are required to describe any new reporting, record-keeping, and other compliance requirements. The action does not contain any new collection of information, reporting, or record-keeping requirements.

Under section 603(b)(5) of the RFA, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act (ESA), the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has also been determined not to duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c) of the RFA, agencies are required to describe any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant economic impacts of the proposed rule on small entities. These alternatives and their impacts are discussed below. Additionally, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than

design standards; and, (4) exemptions from coverage of the rule, or any part thereof, for small entities.

Regarding the first, second, and fourth categories, NMFS cannot establish differing compliance or reporting requirements for small entities or exempt small entities from coverage of the rule or parts of it, because all of the businesses impacted by this rule are considered small entities, and thus the requirements are already designed for small entities. Thus, no alternatives are discussed that fall under the first and fourth categories described above. Amendment 7 in 2014 implemented criteria for determining the availability of BFT quota for Purse Seine fishery category participants and IBQs for the Longline category. Both of these and the eligibility criteria for IBQs and access to the Cape Hatteras Gear Restricted Area for the Longline category can be considered individual performance standards. NMFS has not yet found a practical means of applying individual performance standards to the other quota categories while concurrently complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category.

NMFS has estimated the average impact that establishing the increased annual U.S. baseline BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories. As mentioned above, the 2017 BFT ICCAT recommendation increased the annual U.S. baseline BFT quota for each of 2018, 2019, and 2020 to 1,247.86 mt and provides 25 mt annually for incidental catch of BFT related to directed longline fisheries in the NED. The annual U.S. baseline BFT subquotas would be adjusted consistent with the process (*i.e.*, the formulas) established in

Amendment 7 (79 FR 71510, December 2, 2014) and as codified in the quota regulations, and these amounts (in mt) would be codified.

This rulemaking proposes to implement the recently adopted ICCAT-recommended U.S. BFT and NALB quotas and, for BFT, to apply the allocations for each quota category per the codified quota regulations. This action would be consistent with ATCA, under which the Secretary promulgates regulations as necessary and appropriate to implement binding ICCAT recommendations.

To calculate the average ex-vessel BFT revenues under this action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the proposed subquotas (*i.e.*, 2017 prices for the General, Harpoon, and Longline/Trap categories, and 2015 prices for the Purse Seine category). For comparison, in 2017, gross revenues were approximately \$9.2 million, broken out by category as follows: General--\$7.8 million, Harpoon--\$496,968, Purse Seine--\$0, Longline--\$878,824, and Trap--\$0. The proposed baseline subquotas could result in estimated gross revenues of \$10 million annually, if finalized and fully utilized, broken out by category as follows: General category: \$6.5 million (555.7 mt \* \$5.30/lb); Harpoon category: \$526,326 (46 mt \* \$5.19/lb); Purse Seine category: \$1.5 million (219.5 mt \* \$3.21/lb); Longline category: \$1.4 million (163.6 mt \* \$3.99/lb); and Trap category: \$10,556 (1.2 mt \* \$3.99/lb).

No affected entities would be expected to experience negative, direct economic impacts as a result of this action. On the contrary, each of the BFT quota categories

would increase relative to the baseline quotas that applied in 2015 through 2017. To the extent that Purse Seine fishery participants and IBQ participants could receive additional quota as a result of the Amendment 7-implemented allocation formulas being applied to increases in available Purse Seine and Longline category quota, those participants would receive varying amounts of an increase, which would result in direct benefits from either increased fishing opportunities or quota leasing.

To estimate potential average ex-vessel revenues that could result from this action for BFT, NMFS divides the potential annual gross revenues for the General, Harpoon, Purse Seine, and Trap category by the number of permit holders. For the Longline category, NMFS divides the potential annual gross revenues by the number of IBQ share recipients. This is an appropriate approach for BFT fisheries, in particular, because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data (particularly from non-Longline participants) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.*, the cost of gas, bait, ice, etc.), so net revenue for each participant cannot be calculated. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish), but for the sake of estimating potential revenues per vessel, category-wide revenues can be divided by the number of permitted vessels in each category. For the Longline

fishery, actual revenues would depend, in part, on each vessel's IBQ in 2018. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT fishery. HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits. Therefore, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category vessels only.

Estimated potential 2018 revenues on a per vessel basis, considering the number of permit holders listed above and the proposed subquotas, could be \$2,409 for the General category; \$47,848 for the Harpoon category; \$310,670 for the Purse Seine category; \$10,582 for the Longline category, using the 136 IBQ share recipients; and \$10,556 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

Consistent with the codified BFT quota regulations at § 635.27(a)(v), NMFS will continue to annually calculate the quota available to historical Purse Seine fishery participants and reallocate the remaining Purse Seine category quota to the Reserve category. NMFS will further adjust those amounts if the annual U.S. baseline BFT quota in this proposed rule is finalized. The analyses in this IRFA are limited to the proposed baseline subquotas.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues above may overestimate the probable economic impacts to those categories relative to recent conditions. Additionally,

there has been substantial interannual variability in ex-vessel revenues in each category in recent years, due to recent changes in BFT availability and other factors.

The 2017 NALB ICCAT recommendation increased the annual U.S. baseline NALB quota for each of 2018, 2019, and 2020 to 632.4 mt. Based on knowledge of current participants in the fishery and estimated gross revenues, NMFS considers all of the entities affected by the NALB quota action be small entities for the purposes of the RFA.

NMFS does not subdivide the U.S. NALB quota into category subquotas. The most recent ex-vessel average price per pound information is used to estimate potential ex-vessel gross revenues. The proposed baseline subquotas could result in estimated gross revenues of \$1.8 million annually, if finalized and fully utilized ((632.4 mt/1.25) \* \$1.63/lb dw). No affected entities would be expected to experience negative, direct economic impacts as a result of this action.

The proposed change to the regulatory text concerning Atlantic bigeye and yellowfin tuna size limits applies to all fishery participants but is not expected to have significant economic impacts. This is because shark damage to caught bigeye and yellowfin tuna is rare, and the proposed change to the regulatory text is not expected to result in changes to Atlantic tunas fishery operations.

## **List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties,  
Reporting and recordkeeping requirements, Treaties.

Dated: June 29, 2018.

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Samuel D. Rauch, III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part  
635 to read as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. Amend § 635.20, by revising paragraph (c)(3) to read as follows:

**§ 635.20 Size limits.**

\* \* \* \* \*

(c) \*\*\*

(3) No person aboard a vessel shall remove the head of a bigeye tuna or yellowfin  
tuna if the remaining portion would be less than 27 inches (69 cm) from the fork of the

tail to the forward edge of the cut. A bigeye or yellowfin tuna that is damaged by shark bites may be retained, possessed, or landed only if the length of the remainder of the fish is equal to or greater than 27 inches (69 cm). No person shall cut or otherwise alter the shark-damaged area in any manner.

\* \* \* \* \*

3. Amend § 635.27, by revising paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(6), (a)(7)(i), (a)(7)(ii), (a)(10)(iii), and (e)(1) to read as follows:

**§ 635.27 Quotas.**

(a) *Bluefin tuna*. Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,247.86 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (555.7 mt); Angling—19.7 percent (232.4

mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (46 mt); Purse Seine—18.6 percent (219.5 mt); Longline—8.1 percent (95.6) plus the 68-mt allocation (*i.e.*, 163.6 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.2 mt); and Reserve—2.5 percent (29.5 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) \* \* \*

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 555.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (29.5 mt);

(B) June 1 through August 31—50 percent (277.9 mt);

(C) September 1 through September 30—26.5 percent (147.3 mt);

(D) October 1 through November 30—13 percent (72.2 mt); and

(E) December 1 through December 31—5.2 percent (28.9 mt).

\* \* \* \* \*

(2) *Angling category quota*. In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 232.4 mt. No more than 2.3 percent (5.3 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.*, 127.3 mt). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (54.8 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school bluefin tuna Angling category quota (49 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) An amount equal to 52.8 percent (52.7 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium bluefin tuna Angling category

quota (47.1 mt) may be caught, retained, possessed or landed north of 39°18' N. lat.

(iii) One third (1.8 mt) of the large medium and giant bluefin tuna Angling category quota may be caught retained, possessed, or landed, in each of the three following geographic areas: North of 39°18' N. lat.; south of 39°18' N. lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 163.6 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) \* \* \*

(i) *Baseline Purse Seine quota.* Pursuant to paragraph (a) of this section, the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 219.5 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or

migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

\* \* \* \* \*

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 46 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 1.2 mt.

(7) \* \* \*

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 29.5 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (23.5 mt) of the total school bluefin tuna Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

\* \* \* \* \*

(10) \* \* \*

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school bluefin tuna quota to ensure compliance with the ICCAT-recommended procedures for addressing overharvest of school bluefin tuna.

\* \* \* \* \*

(e) *Northern albacore tuna*—(1) *Annual quota*. Consistent with ICCAT recommendations and domestic management objectives, the total baseline annual fishery quota is 632.4 mt ww. The total quota, after any adjustments made per paragraph (e)(2) of this section, is the fishing year's total amount of northern albacore tuna that may be landed by persons and vessels subject to U.S. jurisdiction.

\* \* \* \* \*

[FR Doc. 2018-14452 Filed: 7/5/2018 8:45 am; Publication Date: 7/6/2018]